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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

WESLEY R. ADAMS, Plaintiff and Respondent, v. UNITED DURALUME PRODUCTS, INC., Defendant and Appellant.	G045643 (Super. Ct. No. 30-2009-00126439) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Ferruzzo & Ferruzzo, David N. Shaver; Law Offices of Bunt & Shaver and David N. Shaver for Defendant and Appellant.

Ludwig Law Center, Eric S. Ludwig and Michelle P. Ludwig for Plaintiff and Respondent.

* * *

Plaintiff Wesley R. Adams sued defendant United Duralume Products, Inc. ("defendant" or "the corporation") for breach of contract and fraud after defendant refused to pay plaintiff's claim for unpaid wages. The court awarded plaintiff about $311,000 on his breach of contract cause of action. Defendant contends the court misinterpreted the employment contract and erred by finding plaintiff's breach of contract claim was not barred by the statute of limitations. We affirm.

FACTS

Plaintiff is the son of Ray Adams.[1] In 2001, Ray was 85 years old and had owned the defendant corporation for over 30 years. In July 2001, plaintiff traveled from his ranch in Oklahoma to visit Ray in California. At that time, Ray asked plaintiff to move to California and "help him run the business." Ray offered plaintiff a salary of $2,500 per week and a relocation allowance of $100,000. Ray said it was imperative for plaintiff to move within 30 days because Ray had fired his general manager and Ray's secretary was quitting, so Ray needed help. As a result, plaintiff sold all his livestock and farm equipment in Oklahoma, but not his real estate.

Plaintiff and defendant entered into a contract dated July 30, 2001 (the contract), which stated in its entirety: "This is to serve as a one-year minimum employment contract between Wesley Adams and United Duralume Products, Inc. Salary to be $2,500.00 per week with a $100,000.00 relocation allowance." The contract was signed by plaintiff and defendant. Ray (as defendant's president) signed on defendant's behalf.

[1] To avoid confusion, we refer to members of the Adams family by their first names. We mean no disrespect.

Plaintiff began working for defendant in August 2001. Toward the end of October 2001, Ray told plaintiff that plaintiff's pay would be decreased to $1,000 per week. Ray explained that since plaintiff did not need the money, plaintiff would benefit from leaving it in the corporation. Ray told plaintiff he could draw the money later if he wanted it. Ray told plaintiff the corporation would belong to plaintiff upon Ray's death. During the time plaintiff worked for defendant, Ray would say on a monthly basis that the corporation would go to plaintiff upon Ray's death. Plaintiff never questioned Ray about the pay reduction.

In January 2005, Ray was hospitalized and transferred the factory and his home to plaintiff to avoid estate planning problems. After Ray was released from the hospital, he hired an estate planning attorney. At the attorney's direction, plaintiff transferred the properties back to Ray. The attorney created several draft trust agreements. Plaintiff saw two drafts that identified him as the trustee and sole beneficiary of the company trust during his lifetime. Plaintiff understood the drafts to mean that during his lifetime, the corporation would be his; he would inherit it.

On August 19, 2005, plaintiff resigned as vice-president of defendant. He resigned in order to go back to Oklahoma to sell his hay crop; the previous year he had lost $50,000 because he had not sold his hay in Oklahoma. At the time, Ray was negotiating with his granddaughter, Shannon Green, to move from the state of Washington to southern California. Because plaintiff and Shannon "were not on the best of terms," Ray thought Shannon would be more inclined to make the move if plaintiff were not an officer of the corporation. Ray thought plaintiff's relationship with Shannon was strained because plaintiff had "fired her father numerous times." For example, around 1991, Ray had plaintiff "come out" and fire Shannon's father. Shannon's father is Mike Adams, who is also a son of Ray.

After plaintiff's resignation, he never returned to work at the corporation, but remained on friendly terms with Ray. Plaintiff still expected that he would be the beneficiary of Ray's trust.

Stanley Pawlowski had known Ray for over 30 years. They were friends and Ray was also a customer of the bank where Pawlowski worked. Pawlowski visited Ray in the hospital in January 2005. Ray acknowledged to Pawlowski that he (Ray) understood he was transferring all of his properties to plaintiff. Later, Pawlowski asked Ray why he made plaintiff transfer the properties back. Ray said he was feeling good and did not want the properties to be sold. Ray complained that he had walked into plaintiff's office and had seen a listing agreement signed by a broker and by plaintiff for the broker to try to sell the properties. Ray showed Stan the listing agreement signed by plaintiff. Ray was "irate" and said he had given plaintiff no authority to sell the properties. Ray also suspected plaintiff might have embezzled money from the corporation. When plaintiff left in 2005 to take care of his crops in Oklahoma, Ray had said his business needed a man now, so if plaintiff left, he could not come back. At that time, Ray also told Teresa Farley, an employee of the corporation, that he did not want plaintiff to go to the ranch to sell hay, and that he told plaintiff, "If you go, don't come back."

Ray told his son, Mike, that plaintiff no longer worked at the corporation because plaintiff "tried to sell the property out from under" Ray and because Ray felt there was "a lot of money" missing.

Plaintiff denied embezzling any funds from defendant. According to plaintiff, Ray accused everyone of stealing. Plaintiff also denied listing the properties for sale. According to plaintiff, about a dozen real estate brokers approached him about selling the properties after they were transferred into his name. Plaintiff gave these documents to Ray, including property appraisals. According to plaintiff, he never signed a listing agreement.

In March 2006 and December 2007, respectively, Ray signed a trust agreement and a second amendment thereto, creating the Ray Adams Trust and naming Shannon Adams Green as trustee and lifetime beneficiary after Ray's death, with the trust's remainder to be distributed to charity.

In April 2006, Mike (Ray's son and Shannon's father) came back into Ray's life. At some point, Ray gave Mike the title of vice-president of the corporation.

Ray died in 2008. Plaintiff first learned he was not the beneficiary of Ray's trust when he received a copy of the trust agreement after Ray's death. Instead, Shannon was the beneficiary. After Ray's death, Shannon named Mike the president of the corporation. The Ray Adams Trust was the corporation's sole shareholder.

After Ray passed away, plaintiff walked into Mike's office and said Ray had cheated him out of back wages. Mike told plaintiff to get a lawyer.

In July 2009, plaintiff filed a complaint against defendant for breach of contract and fraud. After defendant's demurrer to the complaint was sustained with leave to amend, plaintiff filed a first amended complaint for breach of contract and fraud in November 2009. In his breach of contract claim, plaintiff alleged he was entitled to $1500 per week for the period from around October 1, 2001 to August 19, 2005.[2]

After a bench trial, the court ruled against plaintiff on his cause of action for fraud, finding Ray's "promises concerning the disposition of his shares in the corporation upon his death [were] not promises that a corporation can make." But the court awarded plaintiff $311,375 (plus costs, with no interest or penalties) on his breach of contract claim. The court interpreted the contract between plaintiff and defendant to guarantee plaintiff employment for at least one year at $2,500 per week, and by "implication," the same salary for as long as he worked there after one year. The court

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[2] Plaintiff claimed he was "entitled to monetary damages from August 1, 2001 through August 19, 2005, for each month in which defendant breached the employment contract."

found the employment contract had not been orally modified by Ray's promise to leave his stock in the business to plaintiff because the corporation did not and could not make that promise, and because if it was true (as defense counsel argued) that Ray never made that promise, there was no consideration for the oral amendment reducing plaintiff's pay. "Regardless of how the court approaches the facts, legality, and logic of the employment agreement, the result is the same: [Plaintiff] had an agreement that entitled him to $2,500 a week while he worked at [defendant]. [¶] [Plaintiff] worked for just over four years at a wage less than his contract rate." The court found that the four-year statute of limitations for breach of written contract started when plaintiff resigned from defendant and therefore plaintiff's action was timely.

DISCUSSION

The Court Properly Interpreted the Contract

Defendant claims the contract is simple and unambiguous, and clearly guarantees plaintiff a weekly salary of $2,500 for only one year. After the first year — defendant argues — Ray was free to unilaterally reduce plaintiff's salary. Relying on *Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 464-465, disapproved on another ground in *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 352, footnote 17, and *DiGiacinto v. Ameriko-Omsery Corp.* (1997) 59 Cal.App.4th 629, 637, defendant contends that an employer may unilaterally reduce the compensation of an at-will employee, so long as this does not breach an implied or express agreement. Defendant concludes that plaintiff, by continuing to work after his salary was decreased, accepted the terms of a new agreement commencing after the expiration of his original one-year contract.

Plaintiff disagrees. In his view, the trial court properly interpreted the contract to guarantee him a weekly salary of $2,500 for so long as he worked for

defendant. Plaintiff contends he deferred his compensation in reliance on Ray's promise that plaintiff "would get his money in the end."

Our threshold task is to determine whether the contract is ambiguous. If it is not ambiguous — if its language is clear, explicit, and not absurd — the language alone governs its interpretation. (Civ. Code, § 1638; see also *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.)[3] This rule serves to "avoid future disputes and to provide predictability and stability to transactions . . . ." (*Abers v. Rounsavell* (2010) 189 Cal.App.4th 348, 356.) In the case of a written contract, "the intention of the parties is to be ascertained from the writing alone, if possible." (§ 1639.) But "'when language is reasonably susceptible of more than one application to material facts,'" an ambiguity arises. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391.) Where ambiguity exists, "'extrinsic evidence may be considered to ascertain a meaning to which the instrument's language is reasonably susceptible.'" (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266 (*ASP*).) As an evidentiary matter, distinct from the rules of contractual interpretation, parol evidence is generally inadmissible to contradict the terms of "a final and complete writing . . . . " (2 Witkin, Cal. Evidence (4th ed. 2000) Documentary Evidence, § 74, p. 192.) But the parol evidence rule does not exclude "evidence of the circumstances under which the agreement was made or to which it relates . . . or to explain an extrinsic ambiguity . . . ." (Code Civ. Proc., § 1856, subd. (g).)

A contract must be interpreted to effectuate the parties' mutual intent at the time of contracting. (§ 1636.) An ambiguous promise must be interpreted in the way "the promisor believed, at the time of making it, that the promisee understood it." (§ 1649.) If the other rules of interpretation do not resolve an uncertainty, "the language

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[3] All statutory references are to the Civil Code unless otherwise stated.

of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." (§ 1654.)

A reviewing court determines de novo whether extrinsic evidence is admissible (*Abers v. Rounsavell, supra,* 189 Cal.App.4th at p. 357), i.e., whether extrinsic evidence shows contractual language is reasonably susceptible to two different meanings (*ASP, supra,* 133 Cal.App.4th at pp. 1268-1270). In addition, a reviewing court construes a written agreement de novo, unless the interpretation of the contract "turns upon the credibility of extrinsic evidence." (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865.) Thus, when the facts are undisputed, an appellate court independently reviews a written contract. (*Mayer v. C.W. Driver* (2002) 98 Cal.App.4th 48, 57.) But if the contract's interpretation "depends upon credibility," a reviewing court must apply the substantial evidence test and "'accept any reasonable interpretation adopted by the trial court.'" (*ASP, supra,* 133 Cal.App.4th at p. 1267.) Under the substantial evidence test, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

Applying a de novo standard of review, we conclude the contract language is ambiguous. The two-sentence contract fails to specify the time period during which it remains effective: "This is to serve as a one-year minimum employment contract between [plaintiff] and [defendant]. Salary to be $2,500.00 per week with a $100,000.00 relocation allowance." The word "minimum" opens the contract to an open-ended duration, lasting for so long as plaintiff remained employed by defendant and the contract was not terminated or modified.

We review for substantial evidence the court's interpretation of the contract, which hinged on conflicting extrinsic evidence. The court interpreted the contact to entitle plaintiff to $2,500 a week while he worked at defendant. Implicit in this ruling is the court's factual finding that plaintiff and defendant did not modify the employment

agreement when Ray reduced plaintiff's salary in October or November of 2001 and plaintiff accepted the decrease. Substantial evidence supports this finding. Plaintiff testified that his understanding of the pay reduction, based on Ray's explanation, was that (1) the money would benefit plaintiff more if it were kept in the corporation's bank account instead of plaintiff's own personal bank account, and (2) plaintiff "could draw [the money] later if [he] wanted it." This evidence supports a finding defendant remained entitled to the unpaid wages and had simply deferred receipt of the funds.[4]

The Court Did Not Err by Finding Plaintiff's Breach of Contract Claim was Not Barred by the Statute of Limitations

The statute of limitations for breach of a written contract is four years. (Code Civ. Proc., § 337, subd. (1).) Defendant contends plaintiff's breach of contract claim "accrued each week he did not receive his $2,500, up to that one year mark."

Plaintiff contends the statute of limitations was tolled or alternatively defendant is equitably estopped from asserting that the limitations period has run. He argues the applicable statute of limitations did not begin to run until he became "aware that he was not going to receive his compensation, or at a minimum until he was terminated or resigned."

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' [Citations.] An important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806-807.) In contract cases, the discovery rule applies to "breaches which can be, and are, committed in secret and,

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[4] Moreover, defendant's argument that the parties agreed to permanently reduce plaintiff's pay is internally inconsistent. Ray took that action in October 2001, yet defendant argues the contract rate controlled for one year (even though plaintiff was not paid at that rate for most of the year) and that plaintiff "was entitled to $2,500.00 per week . . . up to August 1, 2002."

moreover, where the harm flowing from those breaches will not be reasonably discoverable by plaintiffs until a future time." (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 832; see also cases discussed in 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 529, p. 680.)

In contrast, the doctrine of equitable estoppel does not postpone accrual of a cause of action or suspend the running of the limitations period. (*Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847.) Rather, equitable estoppel "'comes into play only after the limitations period has run and addresses itself to the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period. Its application is wholly independent of the limitations period itself and takes its life, not from the language of the statute, but from the equitable principle that no man will be permitted to profit from his own wrongdoing in a court of justice.'" (*Id.* at pp. 847-848.) "'To create an equitable estoppel, "it is enough if the party has been induced to *refrain* from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss."'" (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152-1153.)

"Resolution of the statute of limitations issue is normally a question of fact." (*Fox v. Ethicon Endo-Surgery, Inc, supra,* 35 Cal.4th at p. 810.) Under the delayed discovery rule, "[t]here are no hard and fast rules for determining what facts or circumstances will compel inquiry by the injured party and render him chargeable with knowledge. [Citation.] It is a question for the trier of fact." (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 597.)

Here, if Ray promised that plaintiff could draw his unpaid wages at any time he desired and that plaintiff would receive his money in the end, defendant is estopped from raising a statute of limitations defense, or, alternatively, the limitations period did not begin to run until plaintiff learned or should reasonably have learned the

promise was a misrepresentation. The court's implied factual finding that Ray made this promise is supported by substantial evidence. Substantial evidence also supports the court's implied factual finding that plaintiff relied on Ray's promise. For example, plaintiff, after learning upon Ray's death that he had been disinherited from The Ray Adams Trust, tried to draw his unpaid wages, but Mike refused to pay him. The court did not err by finding that plaintiff's breach of contract claim was not barred by the statute of limitations.

DISPOSITION

The judgment is affirmed. Plaintiff is entitled to his costs on appeal.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.